IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 31731 of 2005(C)

OS.1362/2003 of MUNSIFF'S COURT-II, ERNAKULAM

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PETITIONER:

CARMEL KURIES AND LOANS PVT. LTD.,
50/100, EDAPPALLY POST, KOCHI-682 024,
REP. BY ITS MANAGING DIRECTOR,
P.A.VARGHESE, S/O.ANTONY, AGED 61 YEARS,
RESIDING AT SEENA, EDAPPALLY NORTH POST,
ERNAKULAM.

BY ADV. SRI.N.F.JAMES
SRI.TOJAN J. VATHIKULAM

RESPONDENTS:

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1. K.X.SEBASTIAN JOSEPH, AGED 43 YEARS,
S/O.K.A.XAVIER, KANIYAMPURAM HOUSE, H.NO.275/A/49,
PUTHUKKALAVATTOM,
ELAMAKKARA POST, PARAYIL ROAD, NEAR IGM SCHOOL,
ERNAKULAM, KOCHI-26.

2. ANTONY JOSEPH, AGED 47 YEARS,
S/O.K.A.XAVIER, KANIYAMPURAM HOUSE,
H.NO.217/2, POONJIKKARA, MULAVUKAD POST,
WORKING AS BANKMAN, FEDERAL BANK LID., BANERJI
ROAD, ERNAKULAM.

3. M.J.ANTONY, AGED 35 YEARS,
S/O.M.C.XAVIER, METHASSERY HOUSE, POONJIKKARA,
MULAVUKAD POST, WORKING AS BANKMAN, FEDERAL BANK
LTD., PANAMBILLY NAGAR BRANCH, ERNAKULAM.

4. M.F.VARGHESE, AGED 38 YEARS,
S/O.FRANCIS, MUKKRUKATTIL HOUSE,
NEAR MARTKET ROAD, THRIPUNITHURA, NADAMA VILLAGE,
KANAYANNUR TALUK, WORKING AS BANKMAN,
FEDERAL BANK LTD., ERNAKULAM NORTH BRANCH.

BY ADV. SRI.T.C.SURESH MENON

WPC.31731/05

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.31731/05

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF THE PROOF AFFIDAVIT FILED BY PETR. BEFORE MUNSIFF'S COURT-II, ERNAKULAM.

EXT.P2 – TRUE COPY OF THE CHITTY SECURITY AGREEMENT DT.13.4.99 EXECUTED BY RESPONDENTS.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.31731 OF 2005

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DATED THIS THE 6TH AUGUST, 2007

J U D G M E N T

The petitioner, a chitty foreman who filed a suit for recovery of money against a subscriber and sureties, relying inter alia on Ext.P2 chitty security agreement, seeks in this Writ Petition a writ of mandamus directing the learned Munsiff to mark Ext.P2 as Ext.A3 in the suit without insisting on payment of deficit stamp duty (and also penalty) on the basis that the document is liable to be stamped under Article 19 of the Schedule to the Kerala Stamp Act.

2. Heard both sides.

3. As rightly submitted by Mr.Tojan J.Vathikulam, counsel for the petitioner, the issue is covered in favour of the petitioner by my own judgment in **Sannidhanam Chitties Ltd. v. Remadevi Mohandas and others** (ILR 2007 (3) Kerala 161). I do not know why the learned Munsiff thought that Ext.P2 is a chitty variola which attracts stamp duty as per Article 19. Ext.P2 is an agreement and is liable to be stamped only as an agreement. I find that Ext.P2 is properly stamped as an agreement.

I therefore allow the Writ Petition in view of the various reasons stated in **Sannidhanam Chitties'** case (supra), set aside the order

dated 4.11.2005 passed by the learned Munsiff directing that Ext.P2 (Ext.A3 referred to in the proof affidavit) shall be stamped under Article 19 of the Schedule to the Stamp Act and direct the learned Munsiff to permit marking of Ext.P2 chitty security agreement as Ext.A3 in the suit.

(PIUS C.KURIAKOSE, JUDGE)

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